

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED *
* November 6, 2025
VS. *
* CIVIL ACTION NO. 1:25-CV-1095
YOUTUBE LLC, ET AL. *

BEFORE THE HONORABLE ALAN D ALBRIGHT
MOTIONS HEARING (via Zoom)

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

10:16 1 (Hearing begins.)

10:16 2 DEPUTY CLERK: A civil action in Case
10:16 3 AU:25-CV-1095, Defense Distributed versus YouTube LLC,
10:16 4 et al. Case called for a motions hearing.

10:16 5 THE COURT: Announcements from counsel,
10:16 6 please.

10:16 7 MR. FLORES: For the plaintiff Defense
10:16 8 Distributed, I'm Chad Flores, Your Honor.

10:16 9 MR. WINGARD: For the defendants YouTube,
10:16 10 Google, and Alphabet, I'm Steve Wingard from Scott
10:16 11 Douglass & McConnico. With me today are Jonathan
10:16 12 Patchen, Anika Holland, Michael Rome from Cooley. And
10:17 13 Denisha Bacchus from Google as well.

10:17 14 THE COURT: Okey dokey. Thank you all.

10:17 15 I have a motion to transfer to the
10:17 16 Northern District of California. I will hear first
10:17 17 from the defendant, please.

10:17 18 MR. PATCHEN: Thank you, Your Honor.
10:17 19 Jonathan Patchen on behalf of the defendants in this
10:17 20 case.

10:17 21 Your Honor, this is a fairly
10:17 22 straightforward motion under 1404(a) with a forum
10:17 23 selection clause. What is not in this issue is what is
10:17 24 typically at issue in forum selection clauses, whether
10:17 25 there's a formation, question, questions of fraud,

10:17 1 undue influence, over-weaning bargaining power, those
10:17 2 type of claims that go to standard garden variety
10:17 3 contract formation issues. None of those are at issue
10:17 4 here. The plaintiff does not contest any of those.

10:17 5 Nor is there any dispute that the forum
10:17 6 selection clauses -- and I say "clauses" because
10:18 7 obviously there are multiple ones, both with respect to
10:18 8 YouTube and Google Ads -- there's no dispute that the
10:18 9 forum selection clauses are mandatory and that the
10:18 10 dispute brought here is within the scope of the forum
10:18 11 selection clause.

10:18 12 The core issue, Your Honor, is whether
10:18 13 Texas law, specifically Sections 143A.003 and .0035
10:18 14 somehow operate to invalidate or preclude a forum
10:18 15 selection clause transfer under 1404(a).

10:18 16 Now, the Supreme Court has been very
10:18 17 clear in Stewart and in Atlantic Marine that in a
10:18 18 1404(a) context in which there is a forum selection
10:18 19 clause that is mandatory and covers the scope in
10:18 20 dispute, that the transfer should occur in all but the
10:18 21 most extraordinary circumstances.

10:18 22 The argument that the plaintiff makes
10:18 23 here is that that -- somehow that Texas statute
10:18 24 overrides Congress' command in 1404(a) and precludes
10:19 25 the transfer.

10:19 1 Now, obviously the plaintiff doesn't make
10:19 2 the strong form of the argument, the one that was
10:19 3 specifically rejected in Stewart that says that Texas
10:19 4 law controls and that Texas law precludes this Court
10:19 5 from transferring. That can't be the case. We know
10:19 6 from Stewart that 1404(a) is the framework, is the
10:19 7 controlling framework.

10:19 8 So what plaintiff argues is that the same
10:19 9 Texas law effectively undoes Stewart because it gets
10:19 10 smuggled in in the fourth factor under the Bremen
10:19 11 analysis as to the enforceability of the forum
10:19 12 selection clause, i.e., that there is a strong public
10:19 13 policy of the forum that precludes enforcement of the
10:19 14 forum selection clause.

10:19 15 I think Shakespeare probably said it
10:19 16 best, right, a rose by any other name still smells as
10:19 17 sweet. If you can't do it directly under Stewart, then
10:19 18 it can't be the case that you can smuggle the exact
10:20 19 same statute, exact same argument and undo what the
10:20 20 Supreme Court said can't be done in Stewart and what
10:20 21 shouldn't be done under Atlantic Marine.

10:20 22 And that is precisely what the Fourth
10:20 23 Circuit said in the Albemarle case, that permitting
10:20 24 this argument would be, quote, an end run around the
10:20 25 rule of MS Bremen and Stewart and Atlantic Marine.

10:20 1 In other words, while it is true that MS
10:20 2 Bremen says that a strong public policy of the forum
10:20 3 state might be a ground by which you could avoid
10:20 4 enforcement of a forum selection clause, our
10:20 5 submission, Your Honor, is that strong public policy
10:20 6 cannot be an antiform selection clause public policy.

10:20 7 Not only would that be an end run around
10:20 8 Bremen, not only would that be a end run around
10:20 9 Stewart, but in fact it completely undercuts the whole
10:20 10 point of Bremen. Right?

10:21 11 If Bremen sets up the exception of strong
10:21 12 public policy as anti -- as an exception to an
10:21 13 enforcement of a forum selection clause, it makes no
10:21 14 sense that Bremen would say, well, in an entire opinion
10:21 15 that is devoted to rejecting antipathy to forum
10:21 16 selection clauses, calling them provincial and in fact
10:21 17 articulating a strong federal policy in favor of forum
10:21 18 selection clauses, that Bremen would have added an
10:21 19 exception that swallows the rule that any state at any
10:21 20 time could declare its antiform selection clause a
10:21 21 strong public policy and completely undo what Bremen
10:21 22 said, that makes no sense, Your Honor. And the Fourth
10:21 23 Circuit made that very clear in the Albemarle decision.

10:21 24 At best for the plaintiff, at best for
10:21 25 plaintiff, Texas' state law becomes a factor to

10:21 1 consider in the 1404(a) transfer motion. And that's
10:22 2 the Matthews decision.

10:22 3 The Matthews decision from the Fifth
10:22 4 Circuit in 2024 said we don't need to decide under the
10:22 5 Bremen analysis whether the forum public policy that is
10:22 6 referenced in Bremen is the federal forum or the state
10:22 7 forum, right? Matthews was an antiform selection
10:22 8 clause arising out of Louisiana as opposed to Texas.

10:22 9 And the Fifth Circuit said we don't need
10:22 10 to do that. We'll look at both states' public
10:22 11 policies. And in that case, which was an admiralty
10:22 12 case, not even a 1404 transfer case, but in an
10:22 13 admiralty case, Matthews said that the federal public
10:22 14 policy -- strong federal public policy in favor of
10:22 15 forum selection clauses did not allow Louisiana's
10:22 16 contrary public policy to preclude enforcement of the
10:22 17 forum selection clause in that case.

10:22 18 We submit, Your Honor, that if that's the
10:22 19 case in Matthews where the only public policy is the
10:22 20 articulated Bremen public policy, that this case is
10:23 21 stronger because not only do we have the Bremen strong
10:23 22 public policy just like in Matthews, but we also have
10:23 23 1404(a), which is Congress' command to consider the
10:23 24 forum selection clauses precisely as Stewart and as
10:23 25 Atlantic Marine said.

10:23 1 So in our position, Your Honor, is that
10:23 2 even if you were to consider the Texas law, which we
10:23 3 submit in the first place, our frontline argument, is
10:23 4 that it's an impermissible consideration under 1404(a)
10:23 5 and the Bremen fourth factor, even if you were to
10:23 6 consider it, federal law is the more important public
10:23 7 policy.

10:23 8 And because that compels enforcement of
10:23 9 the forum selection clause and because there is no
10:23 10 other reason to deny enforcement of the forum selection
10:23 11 clause, transfer should follow.

10:23 12 And I'm happy, if Your Honor has
10:23 13 questions, to talk about the public interest factor,
10:23 14 sort of the residual argument that's been made, or the
10:23 15 waiver argument that we have in our brief. But I think
10:24 16 our frontline position, subject to Your Honor's
10:24 17 questions, is that the enforceability question cannot
10:24 18 be answered by Texas' anti public -- antiform
10:24 19 selection public policy.

10:24 20 THE COURT: Do you want to address
10:24 21 anything about the Fifth Circuit holding in Weber,
10:24 22 W-e-b-e-r, case?

10:24 23 MR. PATCHEN: I don't think that the
10:24 24 Weber decision, Your Honor, has particular bearing in
10:24 25 this matter. Apart from the fact that it's --

10:24 1 identifies that strong public policy is an exception to
10:24 2 the enforceability -- or one of the grounds for
10:24 3 nonenforceability in Bremen.

10:24 4 I don't think it (audio distortion) the
10:24 5 question in the way -- what forum gets to decide the
10:24 6 public policy and whether or not an antiform selection
10:24 7 clause provision in a state law is a recognizable
10:24 8 public policy exception.

10:25 9 THE COURT: And also, what do we do if
10:25 10 the Court finds the forum selection clauses are
10:25 11 unenforceable? How do I move forward?

10:25 12 MR. PATCHEN: Well, I think that
10:25 13 obviously we would -- it's a question of law, we
10:25 14 would -- one that needs to be resolved for -- it's a
10:25 15 question of law, we'd have, you know, that that it
10:25 16 should come out differently. But at the very least,
10:25 17 that's obviously repeatedly appealed to the Fifth
10:25 18 Circuit. We would probably deal with it in that way,
10:25 19 Your Honor. I have not --

10:25 20 THE COURT: I'm sorry. What I meant was
10:25 21 what do I do -- how do I balance the private and public
10:25 22 interest factors if I determine that the -- it's
10:25 23 unenforceable? I'm sorry I wasn't clear.

10:25 24 MR. PATCHEN: Oh, I see what you're
25 saying, Your Honor. I think if you just go to the

10:25 1 1404(a) and you see the forum selection clause, I think
10:25 2 all of the factors point in favor of transferring in
10:25 3 that context. Obviously the parties haven't briefed to
10:25 4 a large extent the private interest factors.

10:26 5 But thinking about those, the convenience
10:26 6 of the witnesses, those are almost all exclusively in
10:26 7 California. That's where policy is made at YouTube.
10:26 8 The -- it's where the Google Ads policy is made.
10:26 9 That's where YouTube and Google are headquartered. So
10:26 10 the witnesses are going to be in California. The vast
10:26 11 majority of the documents are going to be in
10:26 12 California. This is an area of extensive experience.
10:26 13 That is where all the forum selection clauses point to.
10:26 14 So the convenience for Google is substantial.

10:26 15 It's not clear to me at all what the
10:26 16 documents or information that would be relevant on the
10:26 17 plaintiff's side of the private interest factors would
10:26 18 have anything to do with Texas. The issue is they
10:26 19 wanted to post a video. YouTube did not allow that
10:26 20 video, did not allow ads to generate revenue from that
10:26 21 video, and they want to sue under Texas law.

10:26 22 It's also untethered particularly to
10:27 23 Texas. There's no particular Texas locale or -- at
10:27 24 issue here. This is a First Amendment defense at the
10:27 25 end of the day, a question of national import. And

10:27 1 even if Defense Distributed is located in Texas, the
10:27 2 question is whether or not their video can be shown
10:27 3 worldwide.

10:27 4 There's no Texas-specific showing of the
10:27 5 video, if it's -- there's a holding or an injunction
10:27 6 that says it has to be posted. It's a nationwide,
10:27 7 worldwide effect. So both the public and the private
10:27 8 interest factors in our mind, Your Honor, even apart
10:27 9 from the forum selection clause, would certainly point
10:27 10 in favor of California.

10:27 11 And even if Your Honor found that the
10:27 12 forum selection clause was technically unenforceable,
10:27 13 we would argue that under Stewart and under Atlantic
10:27 14 Marine, that this Court should still weigh those
10:27 15 private interest factors in favor of a transfer.

10:27 16 Even if it's not dispositive in the way
10:28 17 that it would normally be in Atlantic Marine, the fact
10:28 18 that the parties agreed and agreed repeatedly that they
10:28 19 would be in California suggests that there is no real
10:28 20 credible private interest factors that cut the other
10:28 21 way in favor of staying in Texas.

10:28 22 THE COURT: Anything else you wanted to
10:28 23 add before I bounce to the other side?

10:28 24 MR. PATCHEN: No, Your Honor.

10:28 25 THE COURT: Okay. Thank you.

10:28 1 A response?

10:28 2 MR. FLORES: Yes, Your Honor.

10:28 3 We have two independent reasons to deny
10:28 4 the motion to transfer. One set of reasons has to do
10:28 5 with the enforceability argument you've heard. There
10:28 6 is the second independent argument about the public
10:28 7 interest factors, and so those deserve independent
10:28 8 analysis.

10:28 9 Our view is that if the Court agrees with
10:28 10 us on Argument 1 and you deem this forum selection
10:28 11 clause unenforceable, it's game over. You don't have
10:28 12 to reach Argument 2, but you could as an additional
10:28 13 reason. So I'll take the points in that order.

10:28 14 First is the question of
10:28 15 unenforceability. My friend on the other side says
10:29 16 that state public policy does not operate directly on
10:29 17 the analysis. That's wrong, and more importantly the
10:29 18 bridge has been crossed.

10:29 19 The Court has already identified the
10:29 20 correct decision, that's Weber. Weber is the Fifth
10:29 21 Circuit case that aligns exactly with what you see in
10:29 22 Davis and Wise Guys. They all say that fourth piece,
10:29 23 the state public policy comes after an or. There are
10:29 24 four ways that are independently sufficient to defeat
10:29 25 an invocation and the or means that state public policy

10:29 1 alone can defeat this, and it does so here.

10:29 2 If ever there is a state law that can
3 marshal enough power to defeat this kind of forum
10:29 4 selection clause, this is that statute.

10:29 5 My friend on the other side misframes it.
10:29 6 It is not a state public policy that is for or against
10:29 7 forum selection clauses. The state public policy here
10:29 8 is the speech policy. It is because if you look at the
10:29 9 exact statute we're talking about, this is 143A.003,
10:29 10 this is the protective provision that we invoke. This
10:29 11 provision is not specific to forum selection clauses.
10:30 12 It does cover them, but the provision protects this
10:30 13 chapter. It says the protection is provided by this
10:30 14 chapter.

10:30 15 So this is not an instance in which a
10:30 16 state is singling out forum selection clauses. In
10:30 17 other context, for example, some states really don't
10:30 18 like arbitration. They have arbitration-specific
10:30 19 statutes. This is not that. The protection here, the
10:30 20 public policy here is the speech policy codified by the
10:30 21 entire chapter.

10:30 22 Weber sets that as the rule and the Davis
10:30 23 and Wise Guys decisions are perfectly on point. They
10:30 24 are this exact scenario, this exact analysis. And they
10:30 25 go nine-tenths of the way and they don't get across the

10:30 1 threshold. They say, no. You don't remand in this
10:30 2 case because the statute lacks one little piece.

10:30 3 And the statute has since been fixed.
10:30 4 The Texas legislature read those decisions, knew
10:30 5 exactly what they meant, and changed the statute to
10:30 6 solve for this exact case.

10:30 7 So if ever there is a case where state
10:30 8 powers exercised enough and with enough specificity and
10:30 9 with enough power, this is that case.

10:31 10 If the Court agrees so far, you don't
10:31 11 have to do any more analysis. My friend on the other
10:31 12 side made some arguments about the private factors.
10:31 13 Those are not properly in the case.

10:31 14 The motion to transfer made only the
10:31 15 invocation of their forum selection clause alone and
10:31 16 then we talked about public interest factors. But
10:31 17 there's been no briefing about how the other private
10:31 18 interest factors might weigh in their favor and they
10:31 19 don't.

10:31 20 The real analysis here would be a public
10:31 21 interest mandate. They're the four public interest
10:31 22 factors. They all overwhelmingly favor keeping this
10:31 23 case in Texas. It doesn't take long to go through them
10:31 24 because they're all dunks on our side.

10:31 25 One is the speed of disposition. We've

10:31 1 shown you and they have not controverted that if this
10:31 2 case stays in Texas, it's going to go three times as
10:31 3 fast as if it goes to California.

10:31 4 I'm going to go a little bit out of
10:31 5 order.

10:31 6 We have the local familiarity with the
10:31 7 local law here. The law to be applied is Texas law.
10:31 8 This Court knows that the NetChoice litigation
10:31 9 exemplifies that much of this litigation is going to be
10:32 10 about what the statute means, how it operates, what its
10:32 11 exact scope is. That is a core question of Texas state
10:32 12 law that the courts of Texas are obviously most
10:32 13 qualified to address, not just because they're in Texas
10:32 14 but because this circuit is already home to the
10:32 15 NetChoice litigation.

10:32 16 So we have speed overwhelmingly in our
10:32 17 favor. We have the forum familiarity with the law.

10:32 18 There's a potential choice of law factor.
10:32 19 And so if you keep this case in Texas, choice of law is
10:32 20 easy because we apply Texas law by default. If you go
10:32 21 to California, that's going to at least be a
10:32 22 complicated question.

10:32 23 But, Your Honor, I want to call your
10:32 24 attention very specifically to the factor about the
10:32 25 local interest in deciding local interests at home.

10:32 1 Because this drives overwhelmingly in our favor for two
10:32 2 critical reasons.

10:32 3 One is first principles. This is a case
10:32 4 about a speaker in Texas invoking a Texas state law
10:32 5 designed to protect speech in Texas. These are all
10:32 6 inherently local interests. Don't believe me, believe
10:32 7 the Fifth Circuit's decision in Bruck. Which is styled
10:32 8 Defense Distributed versus Bruck. It is the same
10:32 9 client, virtually the same case.

10:33 10 Our client sues to vindicate speech
10:33 11 rights that are being violated by an out-of-state
10:33 12 censoring regime. And the Fifth Circuit holds that in
10:33 13 that scenario, when someone out of state is censoring
10:33 14 Texans, that kind of controversy is inherently local,
10:33 15 and under a transfer analysis, has to stay in Texas.
10:33 16 They have zero answer to Bruck.

10:33 17 So we have both the first principles of
10:33 18 all four factors and the most important Fifth Circuit
10:33 19 case is going right on point with this exact client in
10:33 20 a parallel scenario. Those are the two independent
10:33 21 reasons to reject the motion to transfer. Either is
10:33 22 sufficient, and I think we have the clear precedent on
10:33 23 both sides.

10:33 24 THE COURT: Your brethren discussed
10:33 25 Weber -- I'm sorry, Stewart. Did you want to say

10:33 1 anything about Stewart?

10:33 2 MR. FLORES: Yes, Your Honor.

10:33 3 We understand Stewart to acknowledge

10:33 4 that -- I think every case that we cite is after

10:34 5 Stewart. And every case we cite says that the state

10:34 6 public policy is still a part of the analysis.

10:34 7 I think their theory of Stewart might

10:34 8 apply if the argument were a state policy specific to

10:34 9 forum selection clauses and you had statute that

10:34 10 existed only to go after forum selection clauses, maybe

10:34 11 their argument would be better. But it doesn't apply

10:34 12 here because the state public policy being invoked is

10:34 13 the speech policy, the chapter-wide policy there.

10:34 14 So the precedent point I have is that

10:34 15 we've already crossed the bridge. That's the Fifth

10:34 16 Circuit's decision in Weber and Wise Guys and Davis.

10:34 17 And then the practical argument I have is that this

10:34 18 statute is more -- is sort of distinguishable from the

10:34 19 ones they're trying to paint it as.

10:34 20 THE COURT: Anything else?

10:34 21 MR. FLORES: Your Honor, they have made

10:34 22 in their briefs some arguments about waiver and timing,

10:34 23 but if they're not going to argue them here, then we

10:34 24 don't need to respond to them.

10:34 25 THE COURT: Okay. Rebuttal?

10:34 1 MR. PATCHEN: Thank you, Your Honor.

10:34 2 With respect to the argument -- three
10:35 3 points. One, Weber says nothing about whether or not
10:35 4 and in what circumstances a state law policy that says
10:35 5 forum selection clauses are unenforceable is or can
10:35 6 trump in the unenforceability analysis of Bremen.

10:35 7 If you look at what the arguments were,
10:35 8 those -- the arguments in Weber were -- deprive the
10:35 9 plaintiff of a remedy, that German law was unfavorable.
10:35 10 It's simply inapplicable except for the general
10:35 11 proposition that is discussed in Weber that in certain
10:35 12 circumstances, state public policy, if it's strong, may
10:35 13 preclude enforcement of a forum selection clause.

10:35 14 Now, my colleague on the other side says,
10:35 15 well, the public policy that's at issue here is a
10:35 16 speech protective public policy and not an antiform
10:35 17 selection clause policy.

10:35 18 If that is their position, if their
10:35 19 position is that the state public policy is just we
10:35 20 want to protect speech of Texans, that has bearing.
10:36 21 There's no reason that that has any impact on a forum
10:36 22 selection clause.

10:36 23 Federal law is very clear that a
10:36 24 California court is to be trusted just as much as a
10:36 25 Texas court in terms of enforcing a Texas law that

10:36 1 provides that. There's no argument that suggests that
10:36 2 California's going to be unable to make that or be able
10:36 3 to rule in that way.

10:36 4 So the only argument, the only basis that
10:36 5 distinguishes -- that plaintiff says distinguishes the
10:36 6 case from Davis or Wise Guys is that in 2023, Texas
10:36 7 added in a provision that says the antiwaiver provision
10:36 8 in 143.003, which says that the protections of the
10:36 9 statute can be waived, they add in 0035, the Texas
10:36 10 legislature does in 2023, that says this -- there's no
10:36 11 forum selection clause, no choice of law, anything of
10:36 12 that sort with respect to the provisions of this
10:36 13 chapter.

10:36 14 It is that provision that is at issue
10:37 15 here. That is the only possible provision that could
10:37 16 stand as a public policy that would preclude
10:37 17 enforcement of a freely entered into forum selection
10:37 18 clause.

10:37 19 And there's no argument that crediting
10:37 20 that public policy would be an end run around Bremen,
10:37 21 that the Fourth Circuit rejected that argument for four
10:37 22 independent reasons in Albemarle, and that the Court --
10:37 23 the Fifth Circuit in Matthews, which -- if we want to
10:37 24 talk about what is the most applicable Fifth Circuit
10:37 25 decision, it would be the Matthews decision from last

10:37 1 year, 2024, which specifically asked this question:
10:37 2 When you say state public policy, do you look at state,
10:37 3 i.e., Louisiana, or do you look at federal? And it
10:37 4 held that it didn't have to decide that question
10:37 5 because even if you did look at both, federal public
10:37 6 policy in favor of forum selection clauses trump.

10:37 7 If we're looking at -- and I disagree
10:38 8 with my colleague on the other side that the public
10:38 9 interest factors are a dunk in Defense Distributed's
10:38 10 favor. I'm happy to talk about court congestion.

10:38 11 Frankly, Your Honor, court congestion is
10:38 12 a question of whether or not the Court is going to be
10:38 13 bothered. Speed to disposition is in fact a private
10:38 14 factor and we cite the cases in our reply brief that
10:38 15 that's not even a consideration. The speed of
10:38 16 disposition as a benefit to the parties is a private
10:38 17 interest, not a public interest factor.

10:38 18 But more importantly, the argument that
10:38 19 this is a speech protective and this is protecting a
10:38 20 Texan's speech is actually incorrect. The speech that
10:38 21 is at issue is not Defense Distributed. YouTube is not
10:38 22 the government. Google is not the government. Google
10:38 23 has the right to tell Defense Distributed we do not
10:38 24 want to put your video up. It has the First Amendment
10:38 25 right to that.

10:38 1 The speech that is being protected is not
10:38 2 Defense Distributed's. This is not a Texas speaker
10:39 3 whose speech is being protected. The speech that is
10:39 4 being protected is a California company who has a forum
10:39 5 selection clause calling for litigation in California
10:39 6 and it is its speech that is being protected.

10:39 7 So to the extent that the argument is
10:39 8 there's censorship, that there's imposition of -- on a
10:39 9 party's speech, the Supreme Court's decision in Moody
10:39 10 makes very clear whose speech is being affected and
10:39 11 those public interest factors point to California, not
10:39 12 Texas.

10:39 13 THE COURT: I'll be back in a second.

10:42 14 (Pause in proceedings.)

10:42 15 THE COURT: Now -- thank you for the
10:42 16 break.

10:42 17 The Court is going to deny the motion to
10:42 18 transfer.

10:42 19 I'll hear the motion to remand.

10:42 20 MR. FLORES: Thank you, Your Honor.

10:42 21 The motion to remand is a question of how
10:42 22 to perform the calculation of the amount in
10:42 23 controversy. The rules that apply are necessarily
10:42 24 typical.

10:42 25 THE COURT: So let me -- I'm sorry to

10:42 1 interrupt. But here's the way I see it. If you want
10:42 2 to go on the record and say that there's no possibility
10:42 3 you are seeking more than \$74,999 in this case, I'm
10:42 4 happy to hear that.

10:43 5 MR. FLORES: I mean, if that's
10:43 6 dispositive, then I think we would make that as an
10:43 7 alternative argument under the sort of indeterminant
10:43 8 amount. But our frontline argument is the amount in
10:43 9 controversy is indeterminant here.

10:43 10 THE COURT: I don't need to hear it.

10:43 11 MR. FLORES: Yes, Your Honor. We'll make
10:43 12 that representation. So we will not seek recovery of
10:43 13 damages more than \$75,000.

10:43 14 THE COURT: Okay.

15 MR. FLORES: The argument on the other
10:43 16 side is the value of their injunction, and so that's
10:43 17 why I'm happy to say that that's not part of what we
10:43 18 want.

10:43 19 THE COURT: Got it.

10:43 20 Let me hear a response from the other
10:43 21 side.

10:43 22 MS. HOLLAND: Thanks, Your Honor. Anika
10:43 23 Holland with Cooley for defendants.

10:43 24 I believe there's some case law in this
10:43 25 district that post removal representations, that the

10:43 1 amount in controversy wouldn't exceed the \$75,000
10:43 2 threshold are not operative, that plaintiff --

10:43 3 THE COURT: You just got him to cap his
10:43 4 damages. Why don't you call your client and have them
10:43 5 like, you know, praise, you know, take you out to a big
10:44 6 dinner? I've never had anyone accept that offer. I
10:44 7 mean, you know, he's put on the record the damages
10:44 8 they're seeking will not -- and that I'm assuming
10:44 9 includes attorneys' fees and everything -- it's not
10:44 10 going to exceed \$75,000. Then why does it belong here?

10:44 11 MS. HOLLAND: Well, Your Honor, I think
10:44 12 there are two things. So first of all, we have the
10:44 13 allegation in the petition that the amount in
10:44 14 controversy exceeds \$5 million, and that speaks to
10:44 15 equitable --

10:44 16 THE COURT: Okay. He's -- I have him on
10:44 17 the record --

10:44 18 MS. HOLLAND: And then we have the second
10:44 19 point about attorneys' fees here. So now --

10:44 20 THE COURT: I'm including attorneys'
10:44 21 fees. He's making a representation that including
10:44 22 attorneys' fees, it's not going to go above \$75,000. I
10:44 23 don't think that's included regardless, but I'm -- when
10:44 24 I asked him the question, I meant total recovery,
10:45 25 damages and attorneys' fees, won't go over \$75,000,

10:45 1 which is the jurisdictional minimum -- yeah, minimum
10:45 2 for me. So what else do you need?

10:45 3 MS. HOLLAND: Well, Your Honor, I did not
10:45 4 hear my friend on the other side say that that amount
10:45 5 included attorneys' fees --

10:45 6 THE COURT: I just -- he's not correcting
10:45 7 me. I've said it now four times. I mean, I would not
10:45 8 want to be him and come in and say, Judge, you said it
10:45 9 four times. Now I want attorneys' fees to exceed -- he
10:45 10 is telling me that he is removing your jurisdictional
10:45 11 minimum to remain in my court. And he's agreeing to
10:45 12 it.

10:45 13 So what do you want me to do? I mean,
10:45 14 he's -- I don't have jurisdiction if he's not seeking
10:45 15 \$75,000 or more.

10:45 16 MS. HOLLAND: Your Honor, I think the
10:45 17 issue is that they've made a judicial admission that
10:46 18 the value of their injunction --

10:46 19 THE COURT: He -- no. They put in the
10:46 20 complaint that it might be. I have him on the record
10:46 21 saying that he's divested me of my jurisdiction.

10:46 22 MS. HOLLAND: And this returns to the
10:46 23 first point, Your Honor, which I think the case law in
10:46 24 the Western District of Texas is that such stipulations
10:46 25 made post removal are not binding.

10:46 1 THE COURT: Well, I don't think we'll
10:46 2 ever know because, as I remember, you don't get to
10:46 3 appeal a remand. So.

10:46 4 MR. PATCHEN: Your Honor, if I may assist
10:46 5 my colleague.

10:46 6 Is the plaintiff also walking away and
10:46 7 not going to be seeking injunctive or other equitable
10:46 8 relief? Because certainly even if they limit their
10:46 9 damage claim to less than \$75,000, the question of
10:46 10 injunctive relief and the value of that injunctive
10:46 11 relief certainly is -- unless that's going away as well
10:46 12 and this is only a question of \$75,000 --

10:46 13 THE COURT: How would you value the value
10:46 14 of the injunction relief?

10:46 15 MR. PATCHEN: We know how much they did,
10:47 16 which they pled at 5,000 -- I'm sorry, 5 million.

10:47 17 THE COURT: No. How would you -- I asked
10:47 18 you, how would you put a value on the injunction?

10:47 19 MR. PATCHEN: The fact that Google has to
10:47 20 change its policy and essentially allow any video --

10:47 21 THE COURT: What person would come in and
10:47 22 testify as to the value of that injunction?

10:47 23 MR. PATCHEN: I would have, Your Honor,
10:47 24 if you needed to have somebody, I would certainly be
10:47 25 able to put up a number of witnesses to talk about the

10:47 1 value and importance of Google and YouTube's content
10:47 2 moderation policy, its importance of being able to
10:47 3 decide which videos.

10:47 4 Frankly, Your Honor, it's free speech
10:47 5 rights that are at issue. That's irreparable injury.
10:47 6 But that's --

10:47 7 THE COURT: Do you have a counterclaim
10:47 8 under the First Amendment?

10:47 9 MR. PATCHEN: We've not moved to (audio
10:47 10 distortion) the time to respond to the pleadings by
10:47 11 stipulation was extended. We don't have a counterclaim
10:47 12 yet, but we --

10:47 13 THE COURT: Do you intend to make a
10:47 14 counterclaim under the First Amendment?

10:48 15 MR. PATCHEN: I expect that we'll just
10:48 16 defend and argue that the --

10:48 17 THE COURT: Well, if you had a
10:48 18 counterclaim under the First Amendment, I would
10:48 19 understand that. But if your defense is going to be --
10:48 20 or might not be, I don't know what you're going to do
10:48 21 when you go to trial, you know, if you want to tell
10:48 22 me -- if you want -- if you want to tell me that you
10:48 23 are going to make a counterclaim that your client's
10:48 24 rights are protected under the First Amendment, well,
10:48 25 then there'll be federal jurisdiction and I wouldn't be

10:48 1 able to remand it.

10:48 2 MR. PATCHEN: I will make that
10:48 3 representation, Your Honor. When we plead, I will
10:48 4 represent that we will plead a First Amendment defense
10:48 5 that the Texas statute is precluded and preempted by
10:48 6 the First Amendment.

10:48 7 THE COURT: And so here's what I'm going
10:48 8 to do because I've thrown all of this at you and you're
10:48 9 just having to kind of deal with me and you all have
10:48 10 done well.

10:48 11 I'm going to give -- before I rule, I'm
10:48 12 going to give the plaintiff an opportunity to research
10:49 13 and let me -- and obviously defendant can find stuff to
10:49 14 support it. I'm not entirely certain a -- the fact
10:49 15 that they are asserting a defense in the First
10:49 16 Amendment is sufficient to have jurisdiction in this
10:49 17 case. And it may not. There may be cases that say
10:49 18 pleading a constitutional response doesn't get you
10:49 19 there.

10:49 20 But I'll give the plaintiff an
10:49 21 opportunity to research this and let me know one way or
10:49 22 the other.

10:49 23 And I'll also give the defendant, if
10:49 24 there's any other -- let me put it this way. As of
10:49 25 right now, with the state of the pleadings, my

10:49 1 inclination would be to remand it. Defendant has made
10:49 2 the representation without the opportunity to speak to
10:49 3 his client, and you ought to get to have that, that you
10:49 4 would make at least a First Amendment counterclaim or
10:49 5 make that part of it.

10:49 6 If you -- knowing what you know, if the
10:50 7 defendant wants to add any other arguments as to why
10:50 8 there might be federal jurisdiction that would prevent
10:50 9 me from removing it, in other words, other claims that
10:50 10 might be made by the defendant, you can do that and get
10:50 11 that to the plaintiff.

10:50 12 And then I'll hear -- the plaintiff can
10:50 13 file whatever it wants to -- I'm sorry, he wants to as
10:50 14 to why a defendant can't create jurisdiction by having
10:50 15 an affirmative defense, and then we all get back
10:50 16 together. So I'm going to postpone ruling on the
10:50 17 motion to remand at this point.

10:50 18 I think that was the last motion we had,
10:50 19 though. So is there anything else we needed to take
10:50 20 up?

10:50 21 MR. PATCHEN: Your Honor, if -- I heard
10:50 22 the Court deny the motion to transfer. Will there be a
10:50 23 written order as to the reasons?

10:50 24 THE COURT: Yes. Yes.

10:50 25 MR. PATCHEN: Okay. I just wanted to

10:50 1 make sure.

10:50 2 THE COURT: You may not have heard, but
10:50 3 we get a lot of motions to transfer. We have a
10:51 4 template.

10:51 5 MR. PATCHEN: Yep.

10:51 6 THE COURT: And counsel for plaintiff?

10:51 7 MR. FLORES: Judge, could you confirm the
10:51 8 order of those supplemental submissions that you
10:51 9 wanted? You wanted the defendants to go first and then
10:51 10 the plaintiff to respond; is that right?

10:51 11 THE COURT: I'd like for the defendant --
10:51 12 knowing that my -- as it stands now with your
10:51 13 representation about taking away my jurisdictional
10:51 14 power under -- because of the amount, any other reason
10:51 15 that they might -- and I will tell -- I'll tell defense
10:51 16 in advance, I'm not going to buy the there's some value
10:51 17 to an injunction because I don't believe that that
10:51 18 could ever be proven.

10:51 19 Even if Yahoo comes in or the defendant
10:51 20 comes in and says, oh, you know, having the ability to
10:51 21 do this is important to us, I get that. But that -- I
10:51 22 would never -- I can't imagine a Daubert where I'd let
10:51 23 someone quantify that. So.

10:51 24 But if the defendant wants to articulate
10:51 25 a First Amendment counterclaim defense, affirmative

10:52 1 defense, whichever it is, and anything else, everything
10:52 2 they want to do, they need to get to you within the
10:52 3 next two weeks. Once you have that, once you see what
10:52 4 they are saying they would like to -- and I would allow
10:52 5 them to amend to do that. Once you have -- you see
10:52 6 that -- there's got to be case law one way or the other
10:52 7 about whether or not that's sufficient in this
10:52 8 situation. And then once you respond, we'll get back
10:52 9 together and I'll let you guys argue it to me.

10:52 10 Is there anything else we need to take up
10:52 11 this morning?

10:52 12 MR. PATCHEN: Not that I'm aware of, Your
10:52 13 Honor.

10:52 14 THE COURT: Well, I'll tell you, I
10:52 15 routinely, at the end of hearings involving patent
10:52 16 cases, compliment the lawyers and say that's why I
10:52 17 enjoy patent cases so much is the quality of the
10:52 18 lawyers. But I will tell you you've given me hope in
10:52 19 that I thought the arguments from counsel on both sides
10:52 20 were really excellent this morning and I enjoyed the
10:53 21 hearing very much. So I look forward to getting
10:53 22 together again in the future. And have a good day.
10:53 23 Take care.

10:53 24 (Hearing adjourned.)
25

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
3
4

5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 6th day of
14 November 2025.

15
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